

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

MARCO CARROTHERS

PLAINTIFF

v.

No. 4:05CV80-M-A

LAWRENCE KELLY, ET AL.

DEFENDANTS

**ORDER DENYING PLAINTIFF'S MOTION [160] TO ALTER JUDGMENT,
DENYING DEFENDANTS' MOTION [168] TO STAY PROCEEDINGS**

This matter comes before the court on the plaintiff's motion [160] to alter the court's June 19, 2007, judgment dismissing all of the plaintiff's claims against defendants Bearry and Santos. The court shall also consider the motion [168] by the defendants for the court to stay this case until the Fifth Circuit rules upon the plaintiff's request for an interlocutory appeal. The court shall deny both of these motions.

Motion [160] to Alter or Amend Judgment

The plaintiff has filed a motion to alter or amend judgment under FED. R. CIV. P. 59(e) and seeks for the court to vacate its June 19, 2007, judgment and reinstate the plaintiff's claims against Dr. Bearry and Dr. Santos. In his motion supporting memorandum, the plaintiff does not argue that the judgment was based upon manifest errors of law or fact; nor does he seek to have the judgment vacated because of newly discovered evidence. FED. R. CIV. P. 59(e). Instead, the plaintiff merely argues the same evidence and the law he presented to the court in opposition to the defendants' motion for summary judgment. Such arguments are insufficient to sustain a motion under Rule 59(e). As such, the plaintiff's motion [160] to alter or amend the court's June 19, 2007, judgment shall be denied.

Motion [168] to Stay Proceedings

The defendants Kelly, Flagg, Scott, Craft, Hill, and Epps have moved under FED. R. CIV. P. 62 for the court to stay the proceedings while the interlocutory appeal the plaintiff has requested is pending. In his interlocutory appeal, the plaintiff seeks to reinstate his claims against the medical defendants, who have been dismissed from this case.

After due consideration, the court finds that the motion is not well taken and shall therefore be denied. The remaining defendants have recently filed a motion for summary judgment, and the court has set a deadline for the plaintiff to respond to that motion. Should the court grant this dispositive motion, then the plaintiff may proceed with an appeal of his entire case – a more efficient method of handling the appeal. On the other hand, should the court deny the dispositive motion, the court would entertain a second motion to stay the proceedings pending the plaintiff's appeal. Again, this would ensure that the case is tried but once, rather than piecemeal – once for the remaining defendants, and – possibly – another time should the Fifth Circuit reinstate the plaintiff's claims against the medical defendants. For these reasons the court shall deny the defendants' motion to stay the case pending interlocutory appeal, without prejudice to the remaining defendants' ability to file another such motion should the procedural posture suggest it.

In sum, the plaintiff's motion [160] to alter or amend judgment is hereby **DENIED**, and the defendants' motion [168] to stay these proceedings pending resolution of the plaintiff's interlocutory appeal is also **DENIED**.

SO ORDERED, this the 31st day of July, 2007.

/s/ Michael P. Mills
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI